

**How the Municipal Land Use Law and Municipal Master Plan
Shape the Municipal Zoning Ordinance**

The New Jersey Municipal Land Use Law

The New Jersey Municipal Land Use Law (“MLUL”), N.J.S.A. 40:55D-1 et seq. (“MLUL”), is a versatile and comprehensive enabling statute that confers the following authority upon a municipality:

- § The power to zone (N.J.S.A. 40:55D-62); see also N.J.S.A. 40:55D-65, setting forth what may be contained in a zoning ordinance;
- § The power to create a Planning Board (N.J.S.A. 40:55D-23); and
- § The power to create a Zoning Board of Adjustment (“Zoning Board” or “Board of Adjustment”) (N.J.S.A. 40:55D-69).

The MLUL also describes and codifies the roles and responsibilities of the municipal governing body, Planning and Zoning Boards in land use administration. These roles and responsibilities include:

- § Membership on Planning (N.J.S.A. 40:55D-23) and Zoning (N.J.S.A. 40:55D-69) Boards;
- § Powers of Planning (N.J.S.A. 40:55D-25) and Zoning (N.J.S.A. 40:55D-70) Boards;
- § Basic standards for relief granted to an applicant under N.J.S.A. 40:55D-70, including:
 - § Appeals from an administrative officer (N.J.S.A. 40:55D-70 a.);
 - § Interpretation of the municipal zoning map or ordinance or decisions on “special questions” upon which a Planning or Zoning Board is authorized to pass by any municipal zoning or official map ordinance (N.J.S.A. 40:55D-70 b.);

- § Bulk variances arising out of hardship from the exceptional narrowness, shallowness, shape or exceptional topographic conditions of a specific piece of property (N.J.S.A. 40:55D-70 c.(1)) or warranted because the purposes of the MLUL would be advanced by a deviation from municipal zoning ordinance requirements and the benefits of said variance would outweigh the detriments thereof (N.J.S.A. 40:55D-70 c.(2));
- § Use variances, variances for expansion of a non-conforming use, deviation from a specification or standard pertaining to a conditional use, floor area ratio, density or height (N.J.S.A. 40:55D-70 d.(1) through (6));
- § Authority of the municipal governing body to adopt or amend the official map of the municipality (N.J.S.A. 40:55D-32 et seq.);
- § Exclusive authority of Planning and Zoning Boards to exercise the powers granted to them under the MLUL (N.J.S.A. 40:55D-20);
- § Authority of the Planning Board to establish and prepare the municipal Master Plan (N.J.S.A. 40:55D-28) and Master Plan re-examination report (N.J.S.A. 40:55D-89);
- § Authority of the Planning and Zoning Boards to conduct subdivision and site plan review and grant approval for same [except for subdivision or individual lot applications for detached one or two dwelling-unit buildings, which are be exempt from site plan review and approval] (N.J.S.A. 40:55D-37 et seq.); and see N.J.S.A. 40:55D-76(b), providing that the Board of Adjustment shall substitute for the Planning Board whenever the Board of Adjustment has jurisdiction over the subdivision or site plan;
- § Authority of the municipal governing body to adopt, by ordinance, regulations requiring a developer, as a condition of subdivision or site plan approval, to pay the pro-rata share of the cost of providing necessary street improvements and water, sewerage and drainage facilities, and easements therefor, located off-tract but necessitated or required by construction or improvements within such subdivision or development (N.J.S.A. 40:55D-

42);

- § Authority of the Planning Board to receive, from the municipal governing body, all proposed municipal development ordinances, regulations, revisions or amendments thereto, to report to the on the consistency or inconsistency of same with the municipal Master Plan, and make recommendations as the board deems appropriate (N.J.S.A. 40:55D-26);
- § Authority of the municipal governing body to enforce the provisions of the MLUL and any municipal ordinance or regulation adopted thereunder (N.J.S.A. 40:55D-18);
- § Authority of the municipal governing body to authorize the Planning Board to prepare a program of municipal capital improvement projects and amendments thereto (N.J.S.A. 40:55D-29 et seq.);
- § Authority of the municipal governing body to, by ordinance pursuant to a written agreement, provide for the joint administration of any or all of the powers conferred upon the municipality by the MLUL with a county, regional or interstate body authorized to act in the region of which the municipality is a part (N.J.S.A. 40:55D-88);
- § Authority of the municipal governing body to prepare and implement a stormwater management plan and stormwater control ordinance(s) to implement said plan (N.J.S.A. 40:55D-93 et seq.), and the further authority to integrate said stormwater management plan with the municipal Master Plan (N.J.S.A. 40:55D-94);
- § Authority of the Board of Adjustment to prepare a yearly Annual Report for the municipal governing body and Planning Board, reviewing the zoning board's decisions on applications and appeals for variances, making findings on zoning ordinance provisions which were the subject of variance requests, and recommending zoning ordinance amendment or revision (N.J.S.A. 40:55D-70.1);
- § Authority of the municipal executive to appoint one or more persons as a citizens' advisory committee to assist or collaborate with the Planning Board

in its duties, though such person or persons have no power to vote or take other action required of the Planning Board (N.J.S.A. 40:55D-27);

§ Authority of the municipal governing body to provide for a historic preservation commission (N.J.S.A. 40:55D-107 et seq.) and zoning regulations for same (N.J.S.A. 40:55D-65.1).

The Master Plan

Planning Board and Board of Adjustment decisions are based upon the application of municipal zoning ordinances which have their basis in a municipality's Master Plan. Under the MLUL, N.J.S.A. 40:55D-28 a., exclusive jurisdiction for preparation, adoption or amendment of the Master Plan rests with the Planning Board (or Combined Board/Land Use Board if one is in place). The purpose of the Master Plan, also stated in N.J.S.A. 40:55D-28 a., is "to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare".

It is notable that the drafters of the MLUL intentionally aligned the purpose of a Master Plan with the fundamental intent and purpose of the MLUL, set forth at N.J.S.A. 40:55D-2 a., "to encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals and general welfare."

Pursuant to N.J.S.A. 40:55D-28 b., the Master Plan sets forth the fundamental land use policies of a municipality in a comprehensive format:

"The Master Plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, at least the following elements (1) and (2) and, where appropriate, the following elements (3) through (16):

(1) *A statement of objectives, principles, assumptions, policies and standards* upon which the constituent proposals for the physical, economic and social development of the municipality are based;

(2) *A land use plan element* (a) taking into account and stating

its relationship to the statement provided for in paragraph (1) hereof, and other Master Plan elements provided for in paragraphs (3) through (14) hereof and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands; (b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, open space, educational and other public and private purposes or combination of purposes including any provisions for cluster development; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance; and ©) showing the existing and proposed location of any airports and the boundaries of any airport safety zones delineated pursuant to the "Air Safety and Zoning Act of 1983,"; and (d) including a statement of the standards of population density and development intensity recommended for the municipality;

(3) A *housing plan element* pursuant to [N.J.S.A. 52:27D-310], including, but not limited to, residential standards and proposals for the construction and improvement of housing;

(4) A *circulation plan element* showing the location and types of facilities for all modes of transportation required for the efficient movement of people and goods into, about, and through the municipality, taking into account the functional highway classification system of the Federal Highway Administration and the types, locations, conditions and availability of existing and proposed transportation facilities, including air, water, road and rail;

(5) A *utility service plan element* analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewerage and waste treatment, solid waste disposal and provision for other related utilities, and including any storm water management plan required pursuant to the provisions of [N.J.S.A. 40:55D-93 et seq.]. If a municipality prepares a utility service plan element as a condition for adopting a development transfer ordinance pursuant to [N.J.S.A. 40:55D-140],

the plan element shall address the provision of utilities in the receiving zone as provided thereunder;

(6) A ***community facilities plan element*** showing the existing and proposed location and type of educational or cultural facilities, historic sites, libraries, hospitals, firehouses, police stations and other related facilities, including their relation to the surrounding areas;

(7) A ***recreation plan element*** showing a comprehensive system of areas and public sites for recreation;

(8) A ***conservation plan element*** providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, endangered or threatened species wildlife and other resources, and which systemically analyzes the impact of each other component and element of the Master Plan on the present and future preservation, conservation and utilization of those resources;

(9) An ***economic plan element*** considering all aspects of economic development and sustained economic vitality, including (a) a comparison of the types of employment expected to be provided by the economic development to be promoted with the characteristics of the labor pool resident in the municipality and nearby areas and (b) an analysis of the stability and diversity of the economic development to be promoted;

(10) An ***historic preservation plan element*** (a) indicating the location and significance of historic sites and historic districts; (b) identifying the standards used to assess worthiness for historic site or district identification; and (c) analyzing the impact of each component and element of the Master Plan on the preservation of historic sites and districts;

(11) ***Appendices or separate reports*** containing the technical foundation for the Master Plan and its constituent elements;

(12) A ***recycling plan element*** which incorporates the State Recycling Plan goals, including provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance, and for the collection, disposition and recycling of recyclable materials within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land;

(13) A ***farmland preservation plan element***, which shall include an inventory of farm properties and a map illustrating significant areas of agricultural land; a statement showing that municipal ordinances support and promote agriculture as a business; and a plan for preserving as much farmland as possible in the short term by leveraging monies made available by the [Garden State Preservation Trust Act, N.J.S.A. 13:8C-1 et seq.] through a variety of mechanisms including, but not limited to, utilizing option agreements, installment purchases, and encouraging donations of permanent development easements;

(14) A ***development transfer plan element*** which sets forth the public purposes, the locations of sending and receiving zones and the technical details of a development transfer program based on the provisions of [N.J.S.A. 40:55D-141];

(15) An ***educational facilities plan element*** which incorporates the purposes and goals of the "Long-Range Facilities Plan" required to be submitted to the Commissioner of Education by a school district pursuant to [N.J.S.A. 18A:7G-4]; and

(16) A ***green buildings and environmental sustainability plan element***, which shall provide for, encourage, and promote the efficient use of natural resources and the installation and usage of renewable energy systems; consider the impact of buildings on the local, regional and global environment; allow ecosystems to function naturally;

conserve and reuse water; treat storm water on-site; and optimize climatic conditions through site orientation and design.”

A Master Plan and its plan elements may be divided into sub-plans and sub-plan elements projected according to periods of time or staging sequences. N.J.S.A. 40:55D-28 c.

Pursuant to N.J.S.A. 40:55D-28 d., the Master Plan shall also include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the Master Plan to (1) the Master Plans of contiguous municipalities, (2) the Master Plan of the county in which the municipality is located, (3) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," [N.J.S.A. 52:18A-196 et seq.] and (4) the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act," [N.J.S.A. 13:1E-1 et seq.] of the county in which the municipality is located. In the case of a municipality situated within the Highlands Region, as defined in [N.J.S.A. 13:20-3], the Master Plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the Master Plan, to the Highlands Regional Master Plan adopted pursuant to [N.J.S.A. 13:20-8].

Power to Zone: Requirement of Consistency Between Master Plan and Zoning Ordinance and Amendments Thereto

Until the 1975 enactment of the MLUL, New Jersey land use law did not mandate consistency between a municipal Master Plan (which was optional) and a municipal zoning ordinance.

The MLUL, at N.J.S.A. 40:55D-62 a., directs that a municipal zoning ordinance, or any amendments to such an ordinance, be consistent with the municipal Master Plan.

“Power to zone. a. The governing body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon. Such ordinance shall be adopted after the Planning Board has adopted the land use plan element and the housing plan element of a Master Plan, and all of the

provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the Master Plan or designed to effectuate such plan elements;..”

Consistent with this directive, N.J.S.A. 40:55D-26 a., provides the Planning Board with an important advisory role in determining and ensuring that an enactment of or amendment to a zoning ordinance is consistent with the Master Plan:

“**Referral powers.** a. Prior to the adoption of a development regulation, revision, or amendment thereto, the Planning Board shall make and transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a development regulation, revision or amendment thereto, shall review the report of the Planning Board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendation.”

Notwithstanding the foregoing, N.J.S.A. 40:55D-62 a. provides a governing body with a narrow exception to enact or revise a municipal zoning ordinance which is inconsistent with or contradictory to the Master Plan. If, after review and scrutiny by both the Planning Board and governing body, the governing body still desires to adopt the inconsistent zoning legislation, it may do so; **however**, this exception expressly makes the governing body and its members accountable for legislatively-created inconsistencies between the zoning ordinance and Master Plan:

“*..provided* that the governing body may adopt a zoning ordinance or amendment or revision thereto which, in whole or part, is inconsistent with or not designed to effectuate the land use plan element and the housing plan element, but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded

in its minutes when adopting such a zoning ordinance;...”

Power to Zone: Requirement of Uniform Zoning Throughout Each District

Beginning with 1953's Municipal Planning Act and continuing into the MLUL, the Legislature has mandated that zoning be uniform within each zone district. Furman, New Jersey Casebook on Zoning, Planning and Land Use Law, § 6-1 (Gann, 2008). This directive is set forth in the MLUL at N.J.S.A. 40:55D-62 a., as follows:

“The zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structure or uses of land, including planned unit development, planned unit residential development and cluster development, but the regulations in one district may differ from those in other districts.”

Permitted Content in a Zoning Ordinance

The MLUL, at N.J.S.A. 40:55D-65, provides the parameters of what may be regulated through a zoning ordinance:

“**Contents of zoning ordinance.** A zoning ordinance may:

- a. Limit and restrict buildings and structures to specified districts and regulate buildings and structures according to their type and the nature and extent of their use, and regulate the nature and extent of the use of land for trade, industry, residence, open space or other purposes.
- b. Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures; the percentage of lot or development area that may be occupied by structures; minimum or maximum lot sizes, or a combination thereof, and dimensions, including provisions concerning lot-size averaging; minimum improvable lot areas and cluster development, and for these purposes

may specify minimum or maximum floor areas, or a combination thereof, floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air, including, but not limited to the potential for utilization of renewable energy sources. Such regulations may provide for the clustering of development between noncontiguous parcels and may, in order to provide equitable opportunities for the use of development potential on off-tract locations in addition to authorized on-site development, and, to encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for the zoning district. The regulations by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a cluster development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for clustered development can be evaluated.

c. Provide districts for planned developments; provided that an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments in a manner consistent with [N.J.S.A. 40:55D-37 et seq.]. The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not be appropriate for a planned development. The standards may vary the type and density, or intensity of land use, otherwise applicable to the land within a planned development in consideration of the amount, location and proposed use of open space; the location and physical characteristics of the site of the proposed planned development considering the availability of existing and proposed infrastructure and the environmental characteristics of the parcel that will be developed and the open space, agricultural or historical resources to be protected; and the location, design and type of dwelling units and other uses. Such standards may provide for the clustering of development between noncontiguous parcels and may, in order to

encourage the flexibility of density, intensity of land uses, design and type, authorize a deviation in various clusters from the density, or intensity of use, established for an entire planned development. The standards and criteria by which the design, bulk and location of buildings are to be evaluated shall be set forth in the zoning ordinance and all standards and criteria for any feature of a planned development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for planned development can be evaluated.

d. Establish, for particular uses or classes of uses, reasonable standards of performance and standards for the provision of adequate physical improvements including, but not limited to, off-street parking and loading areas, marginal access roads and roadways, other circulation facilities and water, sewerage and drainage facilities; provided that [N.J.S.A. 40:55D-53] shall apply to such improvements.

e. Designate and regulate areas subject to flooding (1) pursuant to [N.J.S.A. 58:16A-55 et seq.] or (2) as otherwise necessary in the absence of appropriate flood hazard area designations pursuant to [N.J.S.A. 58:16A-50 et seq.] or floodway regulations pursuant to P.L.1972, c.185 or minimum standards for local flood fringe area regulation pursuant to P.L.1972, c.185.

f. Provide for conditional uses pursuant to [N.J.S.A. 40:55D-67].

g. Provide for senior citizen community housing.

h. Require as a condition for any approval which is required pursuant to such ordinance and the provisions of this chapter, that no taxes or assessments for local improvements are due or delinquent on the property for which any application is made.

I. Provide for historic preservation pursuant to [N.J.S.A. 40:55D-65.1].

j. Provide for sending and receiving zones for a development transfer

program established pursuant to [N.J.S.A. 40:55D-137 et al.].

k. Provide for areas to be developed and areas to be preserved through cluster development or establish criteria for the establishment of such areas for cluster development.

l. Provide that parcels that are developed and parcels that are preserved through contiguous cluster or noncontiguous cluster may be consolidated for tax and stewardship purposes if they are in common ownership.”

N.J.S.A. 40:55D-65.1 further permits a zoning ordinance to designate and regulate historic sites or historic districts and provide design criteria and guidelines therefor.

The Master Plan Re-Examination Report

The Master Plan, by design, is not intended to be a static document; rather, it is a living document which evolves along with the municipality. Re-examination of the Master Plan by the Planning Board is required every ten (10) years, N.J.S.A. 40:55D-89, and failure of a Planning Board to adopt a Re-Examination Report shall constitute a rebuttable presumption that municipal development regulations are no longer reasonable. N.J.S.A. 40:55D-89.1. The Re-Examination Report must set forth the following information:

a. The major problems and objectives relating to land development in the municipality at the time of the adoption of the last Re-Examination Report;

b. The extent to which such problems and objectives have been reduced or have increased subsequent to such date;

c. The extent to which there have been significant changes in the assumptions, policies, and objectives forming the basis for the Master Plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition, and recycling of designated recyclable materials, and changes in State, county and

municipal policies and objectives;

d. The specific changes recommended for the Master Plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new Master Plan or regulations should be prepared; and

e. The recommendations of the Planning Board concerning the incorporation of redevelopment plans adopted pursuant to the "Local Redevelopment and Housing Law," [N.J.S.A. 40A:12A-1 et seq.] into the land use plan element of the Master Plan, and recommended changes, if any, in the local development regulations necessary to effectuate the redevelopment plans of the municipality.

A Re-Examination Report can be quite extensive or, in limited instances, an affirmation of an existing Master Plan with the conclusion that no changes are necessary. While the municipality's planning professionals will be heavily involved in the formulation of the report, the Planning Board will also appoint a subcommittee to conduct investigation and report findings and conclusions to the board. The Planning Board may also convene public hearings to elicit citizen comment which will be used in the Re-Examination Report.

N.J.S.A. 40:55D-89.1 provides that the failure of the Planning Board to adopt a Re-Examination Report shall constitute a rebuttable presumption that the municipal development regulations are no longer reasonable. However, such an issue, which involves a question of law, should not be raised before a Planning or zoning board, which do not decide questions of law. Instead, the issue is more appropriately raised in the New Jersey Superior Court. Cox, New Jersey Zoning and Land Use Administration, §8-4 (Gann, 2017); Fischer v. Tp. of Bedminster, 5 N.J. 534, 542 (1950); Messer v. Burlington Tp., 172 N.J. Super. 479, 487 (Law Div. 1980). To avoid such problems, it is important that the Zoning Officer, Board Secretary and Board Attorney keep track of the age of the Master Plan and advise the Board Chairman well ahead of the ten-year deadline to adopt the Re-Examination Report.

The Annual Report

Pursuant to N.J.S.A. 40:55D-70.1, the Zoning Board of Adjustment is

responsible for preparation of an Annual Report which summarizes the applications before it each year as a means of detecting development trends in a municipality. The Board of Adjustment's duties in connection with the Annual Report are as follows:

“The Board of Adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report on its findings on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any. The Board of Adjustment shall send copies of the report and resolution to the governing body and planning board.”

The Annual Report is often misunderstood and sometimes not even prepared by the Board of Adjustment. This is a major mistake because, in the event a municipal zoning ordinance(s) is challenged for legal sufficiency via litigation, one of the public records to be scrutinized by both the challenger and the reviewing court will be the Annual Report(s) and their analyses and recommendations with regard to the ordinance (s) in question.